

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 FOR THE WESTERN DISTRICT OF WASHINGTON
9 SEATTLE DIVISION

10 RICHARD BUTLER,

11 Plaintiff,

v.

12 SIGNAL HILL TELECOM SERVICES US,
13 INC.,

14 Defendant.

15 CASE NO. C20-0578-JCC

16 ORDER

17 This matter comes before the Court on Plaintiff Richard Butler's motion for default
18 judgment against Defendant Signal Hill Telecom Services US, Inc. ("Signal Hill") (Dkt. No. 14).
19 Having thoroughly considered the Plaintiff's motion and the relevant record, the Court hereby
20 GRANTS Plaintiff's motion for the reasons explained herein.

I. BACKGROUND

21 Plaintiff Richard Butler initiated this action against Signal Hill in April 2020 for alleged
22 violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.* (Dkt. No. 1.) Mr.
23 Butler alleges that Signal Hill employed him as an auditor from November 2017 until March
24 2020. (*Id.* at 2.) Mr. Butler alleges that Signal Hill violated the FLSA's overtime pay
25 requirements by failing to pay him one and one-half times his regular wage rate for hours worked
26 over forty hours per week. (*Id.* at 7.)

1 Signal Hill's registered agent, Carson Law Group, was served with a summons and a
 2 copy of the complaint on April 21, 2020. (Dkt. No. 4.) Signal Hill was required to respond with
 3 an answer or responsive motion by May 12, 2020, but it has thus far failed to plead or otherwise
 4 defend this action. (*See id.*) On January 15, 2021, Mr. Butler moved for a clerk's entry of default
 5 against Signal Hill, (Dkt. No. 8), and the Clerk entered the default on January 21, 2021, (Dkt.
 6 No. 13). Mr. Butler now moves for the entry of default judgment against Signal Hill. (Dkt. No.
 7 14.)

8 **II. DISCUSSION**

9 **A. Legal Standard**

10 Under the Federal Rules of Civil Procedure, any party may make a motion for default
 11 judgment. Fed. R. Civ. P. 55(b)(2). The decision whether to enter a default judgment is left to the
 12 discretion of the district court. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Factors
 13 the court may consider in its exercise of discretion include: (1) the possibility of prejudice to the
 14 plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the complaint; (4)
 15 the sum of money at stake; (5) potential disputes concerning material facts; (6) whether default
 16 was due to excusable neglect; and (7) the Federal Rules of Civil Procedure's strong policy
 17 favoring decisions on the merits. *See Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986).

18 Following the entry of default, the plaintiff's well-pleaded factual allegations are
 19 accepted as true, except allegations related to the amount of damages, *TeleVideo Sys., Inc. v.*
 20 *Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987), but "necessary facts not contained in the
 21 pleadings, and claims which are legally insufficient, are not established by default," *Cripps v.*
 22 *Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992) (citation omitted). Finally, if the
 23 plaintiff seeks a damages award, the plaintiff must provide the Court with evidence establishing
 24 the amount. *TeleVideo Sys.*, 826 F.2d at 917–18.

25 **B. FLSA Claim**

26 Under the FLSA, "no employer shall employ any of his employees who in any workweek

1 is engaged in commerce . . . or is employed in an enterprise engaged in commerce . . . for a
 2 workweek longer than forty hours unless such employee” is paid “a rate not less than one and
 3 one-half times the regular rate at which he is employed” for each hour worked in excess of forty
 4 hours. 29 U.S.C. § 207(a)(1). Under the FLSA, an “employee” is “any individual employed by
 5 an employer.” 29 U.S.C. § 203(e)(1). An *employer* qualifies as an “enterprise engaged in
 6 commerce” subject to FLSA if it (1) “has employees engaged in commerce” and (2) “is an
 7 enterprise whose annual gross volume of sales made or business done is not less than \$500,000
 8 (exclusive of excise taxes at the retail level that are separately stated).” 29 U.S.C. § 203(s)(1)(A).
 9 The FLSA also includes a litany of exemptions to the classes of employees covered by FLSA
 10 overtime requirements, *see* 29 U.S.C. § 213, but “the application of an exemption under the
 11 [FLSA] is [an] affirmative defense on which the employer has the burden of proof.” *Corning*
 12 *Glass Works v. Brennan*, 417 U.S. 188, 196–97 (1974).

13 Mr. Butler alleged that Signal Hill was an enterprise engaged in commerce through its
 14 “telecom and auditing services” and that its annual gross volume exceeded \$500,000 exclusive of
 15 certain taxes as required under FLSA. (Dkt. No. 1 at 3.) Further, Mr. Butler alleged he was an
 16 employee of Signal Hill engaged in “provid[ing] telecom services and remote auditing services,”
 17 that Signal Hill erroneously misclassified him as exempt from the FLSA overtime rules, and as a
 18 result failed, to pay him the FLSA-mandated overtime premium for hours worked in excess of
 19 forty per week. (Dkt. No. 1 at 4, 7.) Taken as true, these allegations bring Signal Hill within the
 20 FLSA’s reach and establish substantive violations of the FLSA’s overtime requirements.

21 **C. *Eitel* Factors**

22 The Court next proceeds to weigh the *Eitel* factors. “These factors usually weigh in favor
 23 of granting default judgment,” and this case is no exception. *G&G Closed Cir. Events, LLC v.*
 24 *Lepez-Gomez*, 2020 WL 1550591, slip op. at 1 (W.D. Wash. Apr. 1, 2020) (citing *Philip Morris*
 25 *USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 498 (C.D. Cal. 2003)). Declining to award
 26 default judgment would strongly prejudice Mr. Butler, as he would be deprived of wages to

1 which he is legally entitled and be left with no recourse, given Signal Hill’s failure to appear. In
 2 light of the analysis above, the second and third factors also favor entry of default judgment, as
 3 the substantive claims in Mr. Butler’s complaint sufficiently alleged overtime violations by
 4 Signal Hill. Under the fourth factor, while the damages requested are not insignificant, they are
 5 in line with other FLSA cases and are calculated based on the explicit text of the FLSA’s
 6 damages provisions. 29 U.S.C. § 216(b). Under the fifth and sixth factors, Signal Hill’s failure to
 7 appear precludes dispute over material facts, and the record provides no support for a finding of
 8 excusable neglect, given that Signal Hill was properly served and has nonetheless failed to
 9 respond for nearly eleven months as of the date of this Order. (See Dkt. No. 4.) Finally, while the
 10 Court notes the Federal Rules’ strong policy favoring decisions on the merits, Signal Hill’s
 11 failure to appear or otherwise defend this matter has made that option unavailable. Accordingly,
 12 all seven *Etel* factors support an entry of default judgment. *See* 782 F.2d at 1471–72.

13 **D. Calculation of Damages**

14 The FLSA permits employees harmed by FLSA violations to seek damages “in the
 15 amount of . . . their unpaid overtime compensation . . . and in an additional equal amount as
 16 liquidated damages,” in addition to “a reasonable attorney’s fee . . . and costs of the action.” 29
 17 U.S.C. § 216(b). The liquidated damages are mandatory, *EEOC v. First Citizens Bank*, 758 F.2d
 18 397, 403 (9th Cir. 1985), unless the employer establishes it had “an honest intention to ascertain
 19 and follow the dictates of the Act and . . . reasonable grounds for believing that [its] conduct
 20 complie[d] with the Act,” *Local 246 Utility Workers Union of Am. v. Southern California Edison
 Co.*, 83 F.3d 292, 297 (9th Cir. 1996) (quotations omitted).

22 Mr. Butler requests “\$19,170.00 in back wages, \$19,170.00 in liquidated damages, and
 23 costs and attorney’s fees in an amount to be determined upon separate motion.” (Dkt. No. 13 at
 24 3.) In support of these amounts, Mr. Butler submits a declaration indicating he worked for Signal
 25 Hill for seventy-two weeks beginning on November 26, 2018 at a weekly wage of \$1,384.80,
 26 and that he worked an average of sixty-five hours per week. (Dkt No. 14-1 at 1–2.) He therefore

1 calculates his hourly rate as \$1,384.80 divided by sixty-five, or \$21.30, and his weekly hours in
2 excess of forty as twenty-five. (Dkt. No. 14-1 at 2.) Given the one and one-half pay requirements
3 of FLSA, that would entitle him to an additional \$10.65 (\$21.30 divided by two) for each hour
4 worked in excess of forty hours, for a total of \$266.25 per week, and a total of \$19,170.00 over
5 the seventy-two weeks he was employed by Signal Hill. Defendants have not appeared to dispute
6 that liquidated damages are required, and the record does not otherwise provide evidence of
7 Defendants' good faith. Accordingly, the Court GRANTS Mr. Butler's request for \$19,170.00 in
8 unpaid overtime compensation and \$19,170.00 in liquidated damages.

9 **III. CONCLUSION**

10 For the foregoing reasons, the Court GRANTS Plaintiff's motion for default judgment
11 (Dkt. No. 14). The Court ORDERS that Defendant is liable to Plaintiff for \$19,170.00 in unpaid
12 overtime compensation and \$19,170.00 in liquidated damages. The Court further GRANTS
13 Plaintiff leave to file a motion for attorney's fees and costs, to be filed no later than fourteen days
14 after this Order. *See* Fed. R. Civ. P. 54(d).

15 DATED this 25th day of March 2021.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE